IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.372 of 2004

Commissioner of Income-tax
Coimbatore. ... Appellant

Vs.

Sri Ramakrishna Mills (Coimbatore)
Limited
Coimbatore. ... Respondent.

Tax Case Appeal No.372 of 2007 is filed under Section 260-A of the Income-tax Act, 1961 against the orders of the Income-tax Appellate Tribunal, 'C' Bench, Chennai made in I.T.A.No.2828/Mds/93 for the assessment year 1990-91 against the order of Commissioner of Income Tax (Appeals) Coimbatore dt. 23.8.93 in ITA No.61-C/93-94 arising out of the Assessment Order of Deputy Commissinoer of Income Tax Special Range-I, Coimbatore, dt.4.3.93 in PAN/GIR. NQ:C N-9948/SR.I/CBE.

For Appellant : Mrs.Pushya Sitaraman
Sr.Standing Counsel for
Income-tax.

For Respondent : Mr.Venkata Narayanan for
Mr.Subbaraya Aiyar

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JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

The revenue has filed appeal against the order of the Income-tax Appellate Tribunal in I.T.A.No.2828/Mds/93 for the assessment year 1990-91.

2. The relevant assessment year is 1990-91. The material facts culminated in filing of the appeal are as follows:

The assessee is a company in which the public are not substantially interested. For the relevant assessment year, the

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assessee filed a return of income on 31.12.1990. While completing the assessment, the assessing officer disallowed certain claims, including adjustment of book profit liability under Section 115J of the Income-tax Act as unabsorbed depreciation. The assessing officer further held that while computing the deduction under Section 80HHC, excise duty, sales tax and scrap sales should be included and thus passed assessment order.

3. The assessee carried the matter on appeal to the Commissioner of Income-tax (Appeals), who inter alia held that computation of book profit is done under the extra ordinary provisions of Section 115J of the Act and it does not in any manner affect the computation of loss or depreciation of investment allowance, otherwise carried forward under the normal provisions of the Act. On further appeal to the Tribunal, the Tribunal held that the issue regarding carry forward loss and allowances when the income was assessed under Section 115J in favour of the assessee. Regarding the deduction under Section 80HHC, the Tribunal held that the excise duty and sales tax should not be included in the turnover for the purpose of calculating the benefit under Section 80HHC. The correctness of the order of the Tribunal is canvassed in this appeal.

4. The appeal is admitted on the following questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that depreciation and other allowances to be carried forward in a case where book profits had been subject to tax is to be separately determined taking into account the profit assessed under Section 115J of the Act?
>
> 2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that Sales Tax and Excise Duty should not be included in the total turnover for the purpose of computation of deduction under Section 80HHC of the Income Tax Act?

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5. Heard the learned counsel on either side and perused the material on record. It is submitted that in respect of the first question of law that the issue is covered in favour of the revenue by the decision of this Court rendered on 19.11.2001 in the case of COMMISSIONER OF INCOME TAX VS. FAB EXPORTS (P.) LIMITED reported in (2002) 258 ITR 56. In the said decision, this Court has held that the plain words of Section 115J(2) are that the determination of the amount in relation to the previous year to be carried forward to the subsequent year under the provisions referred to therein shall not be affected by anything contained in

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sub-section (1). Those words are clear enough. The fact that a part of the income, which was set off against the carried forward loss and depreciation even when, as a result of such set off, was not available for being taxed, was nevertheless deemed to be available for taxation to the extent of thirty percent, of the book profit, could not therefore result in the assessee becoming entitled to carry forward the extent of the loss which could not be utilised for reducing the burden of taxation by setting off the same against the profits being carried forward to a succeeding assessment year or years.

6. Subsequent to that, the Supreme Court also in a decision rendered on 3.12.2002 in the case of KARNATAKA SMALL SCALE INDUSTRIES DEVELOPMENT CORPORATION LIMTIED VS. COMMISSIONER OF INCOME-TAX reported in (2002) 258 ITR 771, after referring to other provisions such as Sections 28 to 43, 32(2), 32A(3), 72(1)(ii), 72A, 73, 74, 74A(3) and 80J, ultimately held that Section 115J(2) does is to preserve this right viz., to carry forward the balance of the unabsorbed deductions in the relevant previous year to the next year. Section 115J allows only the unabsorbed losses, depreciation, investment allowance, etc., which could otherwise have been carried forward, to be carried forward. The allowances need not have been quantified under sub-section (1) of Section 115J to be carried forward under sub-section (2).

7. In the light of the ruling of this Court and that of the Supreme Court stated above, the first question of law is answered in favour of the revenue.

8. The second question of law has been decided by the Supreme Court against the revenue in the case of COMMISSIONER OF INCOME TAX VS. LAKSHMI MACHINE WORKS reported in 290 ITR 667 by saying that Section 80HHC of the Income-tax Act, 1961 is a beneficial section. It was intended to provide incentive profits relatable to exports. Just as commission received by the assessee is relatable to exports and yet it cannot form part of "turnover" for the purposes of Section 80HHC, excise duty and sales tax also cannot form part of "turnover". Just as interest, commission, etc., do not emanate from the "turnover" so also excise duty and sales tax do not emanate from such "turnover". Since excise duty and sales tax did not involve any such turnover, such taxes had to be excluded. Commission, interest, rent, etc., do yield profits, but they do not partake of the character of turnover and therefore they are not includible in the "total turnover". If so, excise duty and sales tax also cannot form part of the "total turnover" under Section 80HHC(3).

9. Therefore, in the light of the decision of the Supreme

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Court, the second question of law has to be necessarily decided against the revenue and the same is decided against the revenue. Hence, the appeal is disposed of as stated above.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Asst.Registrar,
Income-tax Appellate Tribunal
Madras "C" Bench, Sashtri Bhavan, Rajaji Salai,
Chennai-34.
2. The Commissioner of Income-tax
(Appeals), Coimbatore,
3. The Deputy Commissioner of
Special Range I, Coimbatore.

+1cc to Mr.N.Muralikumaran, Advocate Sr 61781

GG(CO)
km/22.10.

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